

SENATE BILL NO. 437

INTRODUCED BY G. PERRY

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE ISSUANCE OF A FISH POND LICENSE FOR A BODY OF WATER SUPPLIED BY AN EXEMPT APPROPRIATION OF GROUND WATER; AMENDING SECTION 87-4-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 87-4-603, MCA, is amended to read:

"87-4-603. Fish pond license for artificial lake or pond -- records. (1) A person who owns or lawfully controls an artificial lake or pond or a private fish pond may apply to the director for a fish pond license. The holder of a private fish pond license may stock the fish pond with fish procured from a lawful source. The department may designate the species of fish that may be released in the pond and otherwise condition the license if there is a possibility of fish escaping from the pond into adjacent streams or lakes. The license holder may take fish from the lake or pond in any manner. Before a license holder may sell fish or eggs or fry from the lake or pond, the license holder shall furnish a corporate surety bond to the state for \$500, conditioned to the effect that the license holder will not sell fish or spawn from any of the public waters of this state or violate the conditions of the license and also conditioned to the effect that the license holder will submit an annual report on transactions to the director.

(2) (a) "Artificial lake or pond" or "private fish pond", as used in this section, means a body of water that is:

(i) created by artificial means or by a diversion of water that does not exceed 500 acres in surface area; or

(ii) an instream pond that does not exceed 500 acres with a tributary spring or stream that does not support game fish or fish species of special concern; and

(iii) not determined by the department to pose an unacceptable risk to game fish or fish species of special concern in adjacent waters.

(b) The term does not include:

(i) a body of water supplied with an appropriation of ground water that is exempt from permitting pursuant

1 to 85-2-306; or

2 (ii) all other natural ponds or bodies of water, including streams or rivers and impoundments or reservoirs
3 of or on a natural stream, river, lake, or pond.

4 (3) An applicant for licensing of an instream private fish pond shall present to the department verification
5 that game fish or fish species of special concern do not occur in the tributary, spring, or stream and that the
6 instream private fish pond does not pose an unacceptable risk to game fish or fish species of special concern in
7 adjacent waters. Verification must be in the form of:

8 (a) a formal report from a department-approved professional fisheries consultant; or

9 (b) other reliable data and documentation.

10 (4) The department may condition the license to require the construction, implementation, and
11 maintenance of measures or devices to prevent fish in an artificial lake or pond from escaping into adjacent
12 waters.

13 (5) (a) A licensee who sells fish or eggs shall keep accurate records of:

14 (i) the species and quantities of fish or eggs sold or purchased;

15 (ii) dates of sales or purchases;

16 (iii) names of purchasers or sellers; and

17 (iv) locations to or from which fish or eggs are transferred.

18 (b) On or before January 31 of each year, a licensee who sells fish or eggs shall file a report with the
19 department, on forms made available by the department, summarizing the records required under subsection
20 (5)(a).

21 (6) A person who owns or controls an artificial lake or pond may request an inspection by the department
22 to ascertain the presence of disease in fish or the illegal introduction of fish species. Whenever the department
23 has reasonable cause to believe that a fish species in the body of water may have been illegally introduced or
24 may have a disease that may affect fish in another body of water, the department shall notify the landowner or
25 landowner's agent by mail or in person of the intention to enter upon the land and shall enter only after notice has
26 been given to the landowner or agent or after every reasonable effort has been made to notify the landowner and
27 receive permission to enter upon the land. Thereafter, the department may enter upon land under the provisions
28 of this subsection for the purposes of inspecting the pond or the body of water, the species of fish in the pond or
29 the body of water, the presence of disease in a fish species, the construction of any impoundment, dam, or fish
30 barrier, and the physical connection of an artificial lake or pond to an adjacent natural lake, pond, or body of

1 water, including a stream or river. The department is responsible for actual damages to any property.

2 (7) If the department finds an illegal introduction of fish or the presence of disease in fish in a licensed
3 fish pond, an artificial lake or pond, or a natural lake, pond, or body of water, the department shall consult with
4 the landowner or the landowner's agent to determine the appropriate action unless an emergency exists. In an
5 emergency situation, the department may order or take appropriate action to address any threat to the state's
6 fisheries resources, including quarantine or destruction of fish, eggs, or the source of a disease. Whenever
7 privately owned fish are destroyed and the private owner is not responsible for an illegal introduction or the
8 introduction of fish with a disease, the department may replace the destroyed fish without charge to the private
9 owner. A landowner or agent who has granted permission for the department to enter is not considered
10 responsible for an illegal introduction of fish or disease unless proved otherwise."

11
12 **NEW SECTION. Section 2. Effective date.** [This act] is effective on passage and approval.

13 - END -